

IN THE DRAWINGS

Attached hereto are Replacement Sheets having drawings in compliance with 37 C.F.R. §§ 1.121(d) and 1.84(c). The drawings are identical to those filed initially as part of the PCT published application. No new matter has been added.

REMARKS

Prior to entry of the present amendments, claims 1-8 were pending in the application. Claims 1, 4, and 8 have been amended. Claims 9-11 have been added. Claims 1-11 remain pending after entry of the present amendments. No new matter has been added.

Support for Claim Amendments

Claim 1 has been amended to recite that the seat element is pivotable relative to the backrest structure about a pivoting axis that is substantially orthogonal to a longitudinal axis of the vehicle. Support for the amendment can be found at least in the specification at paragraph [0028], in FIGS. 1 and 2 (showing the pivoting of the seat element in side view), and in FIGS. 3 and 4 (showing the pivoting of the seat element in perspective view).

Claim 1 has been further amended to delete a feature that forms the basis for new claim 9. Support for recitation of a vehicle seat having a backrest and a seat element provided at the free end of the backrest can be found in the specification at least at paragraphs [0001], [0007], and [0008].

Claim 4 has been amended to delete the term “in particular” to avoid an indefiniteness rejection.

Claim 8 has been amended similarly to claim 1 to recite a pivoting axis that is substantially orthogonal to a longitudinal axis of the vehicle. Support for the amendment can be found at least in paragraph [0028] and in FIGS. 1-4.

Claim 9 recites the feature deleted from claim 1.

Claim 10 recites the features of original claim 5 in independent form.

Claim 11 depends from claim 10 and recites the features of original claim 6.

Drawings

The Examiner has asserted an objection to the drawings as not being in compliance with 37 C.F.R. § 1.121(d) “because the drawings were not filed separately but with the PCT published document.” Office Action at page 3.

Applicants respectfully submit that the Examiner has not set forth a proper objection to the drawings, because there is no requirement to file drawings separately from the drawings in the PCT published document when entering the national phase under 35 U.S.C. § 371(c).

Nevertheless, in the interest of advancing the prosecution of the application, Applicants submit the replacement drawing sheets appended hereto, which are identical to those in the PCT published application.

Allowable Subject Matter

Applicants thankfully acknowledge the Examiner's indication that claims 5-6 would be allowable if rewritten in independent form, and upon overcoming the 35 U.S.C. § 112 rejection of claim 1 discussed below.

Because Applicants respectfully submit that claims 1-4, from which claims 5-6 depend, are allowable, claims 5-6 have been retained in dependent form.

However, claims 10 and 11 have been added, claim 10 reciting the subject matter of original claim 5 in independent form and overcoming the § 112 rejection, and claim 11 reciting the features of claim 6 and depending from claim 10. Accordingly, Applicants respectfully submit that claims 10 and 11 are allowable.

Claim Rejections – 35 U.S.C. § 112

Claims 1-8 stand rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner contends that the term "in particular" as used in claims 1 and 4 is a narrow limitation within a broad limitation, which renders the claims indefinite.

Claims 1 has been amended to delete the "in particular" phrase. Claim 9 has been added to depend from claim 1, reciting the subject matter deleted from claim 1.

Claim 4 has been amended to delete the term "in particular."

Applicants respectfully submit that claim 8 should not have been rejected under 35 U.S.C. § 112 because it does not depend from claim 1 and because there is no basis on which claim 8 could be construed as indefinite.

Accordingly, Applicant respectfully requests that the rejection of claims 1-8 as indefinite be withdrawn.

Claim Rejections – 35 U.S.C. § 102 (Reuber)

Claims 1-4 and 7-8 stand rejected as being anticipated by U.S. Patent No. 5,205,585 (Reuber et al.).

It is hornbook law that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131 (quoting *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added)).

Claim 1:

Claim 1, as amended, recites a vehicle seat having a seat element which is pivotally linked to a backrest structure of the vehicle seat, and a pivoting axis about which the seat element is pivotable relative to the backrest structure, the pivoting axis being substantially orthogonal to a longitudinal axis of the vehicle. Further, the seat element has a coinstantaneous bifunctionality as headrest and safety device (i.e., “the seat element acts, at the same time, as a headrest and as protection against rollover”).

In the claimed device, the seat element pivots between an operative position and a non-operative position. In the operative position, the seat element functions simultaneously as both a headrest and roll bar, when a passenger occupies the seat to which the seat element is pivotably linked. The seat element is easily brought into the operative position by pivoting the seat element rearward and upward about the pivoting axis, which is substantially orthogonal to the longitudinal axis of the vehicle. However, when the seat is unoccupied, the seat element can be brought into the non-operative position by pivoting the seat element forward and downward about the pivoting axis.

Reuber does not disclose a device that functions at the same time both as a headrest and as a protection against rollover. Rather, Reuber discloses a safety device for automotive vehicles comprising a roll bar that is automatically deployed in connection with a vehicle crash from a comfort providing position, in which it solely serves as a headrest, into an operative position, in which it provides a safety function. Reuber’s device deploys from the comfort providing position to the operative position only when a vehicle crash is imminent. See col. 1, lines 27-32;

col. 2, lines 49-65. Thus, Reuber fails to disclose, teach, or suggest a device to serve as both a headrest and safety protection against rollover at the same time.

Further Reuber does not disclose a device having a seat element pivotably linked to a backrest structure of a vehicle seat such that the seat element pivots about a pivoting axis that is substantially orthogonal to the longitudinal axis of the vehicle. Rather, the displacement in Reuber's safety device "takes place substantially in a plane which runs at right angles relative to the longitudinal axis of the vehicle." Claim 1 at col. 4, lines 15-22; Abstract. See also, in particular, FIGS. 2, 3, 6, and 7. Reuber's roll bar is displaced into the operative safety position in one of two ways: (a) by either a telescoping movement (see col., lines 1-65; col. 3, lines 6-48; FIGS. 1-3 and 6), or (b) by a pivoting movement about a pivoting axis (35) which is parallel to the longitudinal axis of the vehicle (see col. 3, lines 49-62 and FIG. 7). Thus, Reuber fails to disclose, teach, or suggest a pivoting axis which is substantially orthogonal to the longitudinal axis of the vehicle.

Therefore, for at least the foregoing reasons, claim 1 is novel and nonobvious over Reuber.

Claims 2-7 and 9:

Without prejudice to their individual merits, claims 2-7 and 9 depend from claim 1 and are therefore patentable for at least the same reasons as claim 1.

Claim 8:

Claim 8, as amended, recites a cabriolet vehicle having a seat element which is can be folded out of a backrest structure of a rear seat unit about a pivoting axis that is substantially orthogonal to a longitudinal axis of the vehicle. Further, the seat element has a coinstantaneous bifunctionality as headrest and safety device (i.e., "the seat element acts, at the same time, as a headrest and as protection against rollover").

As discussed above with regard to claim 1, Reuber does not disclose a device that functions at the same time both as a headrest and as a protection against rollover. Rather, Reuber discloses a safety device for automotive vehicles comprising a roll bar that is automatically deployed in connection with a vehicle crash from a comfort providing position, in which it solely serves as a headrest, into an operative position, in which it provides a safety function.

Further, as discussed above with regard to claim 1, Reuber does not disclose a device having a pivoting axis such that the seat element folds out about a pivoting axis that is substantially orthogonal to the longitudinal axis of the vehicle. Rather, the displacement in Reuber's safety device "takes place in a plane which runs at right angles relative to the longitudinal axis of the vehicle," either by a telescoping movement or by a pivoting about a pivoting axis which is parallel to the longitudinal axis of the vehicle.

Therefore, for at least the foregoing reasons, claim 8 is novel and nonobvious over Reuber.

References Not Relied Upon for Rejections

The Examiner further cites two references U.S. Patent No. 6,572,145 (Guillez et al.) and U.S. Patent No. 5,066,040 (Dangl et al.).

Guillez teaches a unifunctional safety roll bar comprising two elements, which are mutually articulated at a top of the roll bar; the axis of articulation is parallel to the longitudinal axis of the vehicle. The roll bar of Guillez does not function as a headrest.

Dangl teaches a unifunctional safety roll bar comprising a plate mounted to a seat back that pivots into position about an axis that extends substantially parallel to the longitudinal axis of the vehicle. The roll bar of Dangl does not function as a headrest.

Therefore, neither Guillez nor Dangl discloses a bifunctional seat element having a pivoting axis substantially orthogonal to a longitudinal axis of the vehicle. Accordingly, for at least the foregoing reasons, Applicants respectfully submit that claims 1-11 are novel and nonobvious over Guillez and Dangl.

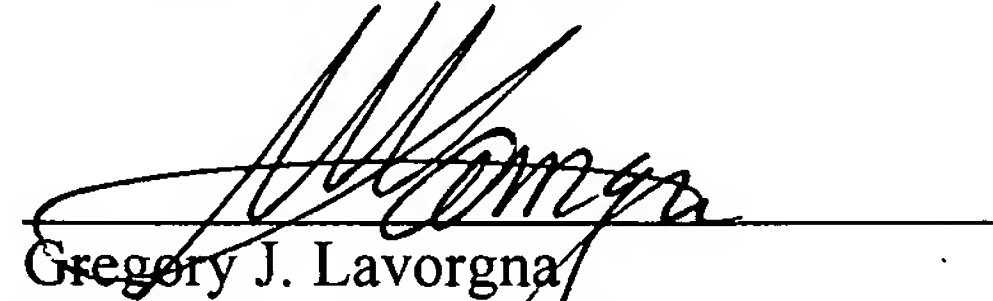
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application, including claims 1-11, is in condition for allowance. An early notice of allowance is earnestly solicited.

Should the Examiner have any questions or comments regarding Applicant's amendments or remarks, the Examiner is asked to contact the undersigned at the below listed telephone number.

Respectfully submitted,

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